

96TH CONGRESS  
2D SESSION

# S. 2216

[Report No. 96-896]

To improve the intelligence system of the United States, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 3), 1980

Mr. MOYNIHAN (for himself, Mr. DOMENICI, Mr. WALLOP, Mr. JACKSON, Mr. NUNN, Mr. DANFORTH, Mr. CHAFEE, Mr. HAYAKAWA, Mr. PRESSLER, Mr. ARMSTRONG, Mr. HOLLINGS, Mr. SCHMITT, and Mr. SIMPSON) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

AUGUST 13, 1980

Reported, under authority of the order of the Senate of August 6 (legislative day, June 12), 1980, by Mr. CHAFEE (for Mr. BAYH), with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

AUGUST 22 (legislative day, JUNE 12), 1980

Referred to the Committee on the Judiciary for not to exceed 20 days that the Senate is in session

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## A BILL

To improve the intelligence system of the United States, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 That this Act may be cited as the "Intelligence Reform Act  
2 of 1980".

3 SEC. 2. Section 662(a) of the Foreign Assistance Act of  
4 1961, as amended (22 U.S.C. 2422(a)), is amended to read  
5 as follows:

6 "No funds appropriated under the authority of this  
7 chapter or any other Act may be expended by or on behalf of  
8 the Central Intelligence Agency for a special activity, unless  
9 and until—

10 "(1) the President finds that the activity is impor-  
11 tant to the national security of the United States and  
12 reports, as soon as possible, a description and scope of  
13 the activity to the Select Committee on Intelligence of  
14 the United States Senate and to the Permanent Select  
15 Committee on Intelligence of the United States House  
16 of Representatives, or,

17 "(2) the National Security Council determines  
18 that the activity does not involve substantial resources  
19 or risks and falls within a category of special activities  
20 which category shall have been found by the President  
21 to be important to the national security of the United  
22 States and which finding shall have been reported to  
23 the Select Committee on Intelligence of the United  
24 States Senate and to the Permanent Select Committee

1       on Intelligence of the United States House of Repre-  
2       sentatives.

3   For the purposes of this subsection, the term 'special activity'  
4   means an activity conducted abroad in support of national  
5   foreign policy objectives which is designed to further official  
6   United States programs and policies abroad and which is  
7   planned and executed so that the role of the United States  
8   Government is not apparent or acknowledged publicly, and  
9   functions in support of such an activity, but not including  
10   diplomatic activity or the collection and production of intelli-  
11   gence or related support functions."

12       Sec. 3. Section 6 of the Central Intelligence Agency  
13   Act of 1949 (50 U.S.C 403g), is amended to read as follows:

14       "In the interests of the security of the foreign intelli-  
15   gence activities of the United States and in order further to  
16   implement the proviso of section 403(d)(3) of this title that  
17   the Director of Central Intelligence shall be responsible for  
18   protecting intelligence sources and methods from unauthor-  
19   ized disclosure, the Agency shall be exempted from the provi-  
20   sions of any law which require the publication or disclosure of  
21   the organization, functions, names, official titles, salaries, or  
22   number of personnel employed by the Agency. In furtherance  
23   of the responsibility of the Director of Central Intelligence to  
24   protect intelligence sources and methods, information in files  
25   maintained by an intelligence agency or component of the

1 United States Government shall also be exempted from the  
2 provisions of any law which require the publication or disclo-  
3 sure, or the search or review in connection therewith, if such  
4 files have been specifically designated by the Director of  
5 Central Intelligence to be concerned with: The design, func-  
6 tion, deployment, exploitation or utilization of scientific or  
7 technical systems for the collection of foreign intelligence or  
8 counterintelligence information; special activities and for-  
9 eign intelligence or counterintelligence operations; investiga-  
10 tions conducted to determine the suitability of potential for-  
11 eign intelligence or counterintelligence sources; intelligence  
12 and security liaison arrangements or information exchanges  
13 with foreign governments or their intelligence or security  
14 services: *Provided*, That requests by American citizens and  
15 permanent resident aliens for information concerning them-  
16 selves, made pursuant to sections 552 and 552a of title 5,  
17 shall be processed in accordance with those sections. The  
18 provisions of this section shall not be superseded except by a  
19 provision of law which is enacted after the date of this  
20 amendment and which specifically repeals or modifies the  
21 provisions of this section.”.

22 SEC. 4. (a) The National Security Act of 1947 is  
23 amended by adding at the end thereof the following new title:

1 ~~"TITLE V—PROTECTION OF CERTAIN NATIONAL~~  
2 ~~SECURITY INFORMATION~~

3 ~~"PROTECTION OF IDENTITIES OF CERTAIN UNITED~~  
4 ~~STATES UNDERCOVER INTELLIGENCE OFFICERS,~~  
5 ~~AGENTS, INFORMANTS, AND SOURCES~~

6 ~~"SEC. 501. (a) Whoever, having or having had author-~~  
7 ~~ized access to classified information that—~~

8 ~~"(1) identifies as an officer or employee of an in-~~  
9 ~~telligence agency, or as a member of the Armed~~  
10 ~~Forces assigned to duty with an intelligence agency,~~  
11 ~~any individual (A) who in fact is such an officer, em-~~  
12 ~~ployee, or member, (B) whose identity as such an offi-~~  
13 ~~cer, employee, or member is classified information, and~~  
14 ~~(C) who is serving outside the United States or has~~  
15 ~~within the last five years served outside the United~~  
16 ~~States;~~

17 ~~"(2) identifies as being or having been an agent~~  
18 ~~of, or informant or source of operational assistance to,~~  
19 ~~an intelligence agency any individual (A) who in fact is~~  
20 ~~or has been such an agent, informant, or source, and~~  
21 ~~(B) whose identity as such an agent, informant, or~~  
22 ~~source is classified information,~~

23 ~~intentionally discloses to any individual not authorized to re-~~  
24 ~~ceive classified information any information that identifies an~~  
25 ~~individual described in paragraph (1) or (2) as such an officer,~~

1 employee, or member or as such an agent, informant, or  
2 source, knowing or having reason to know that the informa-  
3 tion disclosed so identifies such individual and that the United  
4 States is taking affirmative measures to conceal such individ-  
5 ual's intelligence relationship to the United States, shall be  
6 fined not more than \$50,000 or imprisoned not more than ten  
7 years, or both.

8       “(b) Whoever with the intent to impair or impede the  
9 foreign intelligence activities of the United States discloses to  
10 any individual not authorized to receive classified information  
11 any information that—

12               “(1) identifies as an officer or employee of an in-  
13 telligence agency, or as a member of the Armed  
14 Forces assigned to duty with an intelligence agency;  
15 any individual (A) who in fact is such an officer, em-  
16 ployee, or member, (B) whose identity as such an offi-  
17 cer, employee, or member is classified information, and  
18 (C) who is serving outside the United States or has  
19 within the last five years served outside the United  
20 States; or

21               “(2) identifies as being or having been an agent  
22 of, or informant or source of operational assistance to,  
23 an intelligence agency any individual (A) who in fact is  
24 or has been such an agent, informant, or source, and

1       (B) whose identity as such an agent, informant, or  
2       source is classified information,  
3       knowing or having reason to know that the information dis-  
4       closed so identifies such individual and that the United States  
5       is taking affirmative measures to conceal such individual's  
6       intelligence relationship to the United States, shall be fined  
7       not more than \$5,000 or imprisoned not more than one year,  
8       or both.

9                        "DEFENSES AND EXCEPTIONS

10       "SEC. 502. (a) It is a defense to a prosecution under  
11       section 501 that before the commission of the offense with  
12       which the defendant is charged, the United States had public-  
13       ly acknowledged or revealed the intelligence relationship to  
14       the United States of the individual the disclosure of whose  
15       intelligence relationship to the United States is the basis for  
16       the prosecution.

17       "(b)(1) Subject to paragraph (2), no person other than a  
18       person committing an offense under section 501 shall be sub-  
19       ject to prosecution under such section by virtue of section 2  
20       or 4 of title 18, United States Code, or shall be subject to  
21       prosecution for conspiracy to commit an offense under such  
22       section.

23       "(2) Paragraph (1) shall not apply in the case of a  
24       person who acted with the intent to impair or impede the  
25       foreign intelligence activities of the United States.

1       “(e) In any prosecution under section 501(b), proof of  
2 intentional disclosure of information described in such sec-  
3 tion, or inferences derived from proof of such disclosure, shall  
4 not alone constitute proof of intent to impair or impede the  
5 foreign intelligence activities of the United States.

6       “(d) It shall not be an offense under section 501 to  
7 transmit information described in such section directly to the  
8 Select Committee on Intelligence of the Senate or to the Per-  
9 manent Select Committee on Intelligence of the House of  
10 Representatives.

11               “EXTRATERRITORIAL JURISDICTION

12       “SEC. 503. There is jurisdiction over an offense under  
13 section 501 committed outside the United States if the indi-  
14 vidual committing the offense is a citizen of the United States  
15 or an alien lawfully admitted to the United States for perma-  
16 nent residence (as defined in section 101(a)(20) of the Immi-  
17 gration and Nationality Act).

18               “PROVIDING INFORMATION TO CONGRESS

19       “SEC. 504. Nothing in this title shall be construed as  
20 authority to withhold information from Congress or from a  
21 committee of either House of Congress.

22               “DEFINITIONS

23       “SEC. 505. For the purposes of this title:

24       “(1) The term ‘classified information’ means information  
25 or material designated and clearly marked or clearly repre-



1 sented, pursuant to the provisions of a statute or Executive  
2 order (or a regulation or order issued pursuant to a statute or  
3 Executive order), as requiring a specific degree of protec-  
4 tion against unauthorized disclosure for reasons of national  
5 security.

6       “(2) The term ‘authorized’, when used with respect to  
7 access to classified information, means having authority,  
8 right, or permission pursuant to the provisions of a statute,  
9 Executive order, directive of the head of any department or  
10 agency engaged in foreign intelligence or counterintelligence  
11 activities, order of a United States district court, or provi-  
12 sions of any rule of the House of Representatives or resolu-  
13 tion of the Senate which assigns responsibility within the re-  
14 spective House of Congress for the oversight of intelligence  
15 activities.

16       “(3) The term ‘disclose’ means to communicate, pro-  
17 vide, impart, transmit, transfer, convey, publish, or otherwise  
18 make available.

19       “(4) The term ‘intelligence agency’ means the Central  
20 Intelligence Agency or any intelligence component of the De-  
21 partment of Defense.

22       “(5) The term ‘informant’ means any individual who fur-  
23 nishes or has furnished information to an intelligence agency  
24 in the course of a confidential relationship protecting the  
25 identity of such individual from public disclosure.



1       **"TITLE V—PROTECTION OF CERTAIN**  
2       **NATIONAL SECURITY INFORMATION**

3       **"PROTECTION OF IDENTITIES OF CERTAIN UNITED**  
4       **STATES UNDERCOVER INTELLIGENCE OFFICERS,**  
5       **AGENTS, INFORMANTS, AND SOURCES**

6       **"SEC. 501. (a) Whoever, having or having had author-**  
7       *ized access to classified information that identifies a covert*  
8       *agent, intentionally discloses any information identifying*  
9       *such covert agent to any individual not authorized to receive*  
10      *classified information, knowing that the information dis-*  
11      *closed so identifies such covert agent and that the United*  
12      *States is taking affirmative measures to conceal such covert*  
13      *agent's intelligence relationship to the United States, shall be*  
14      *fined not more than \$50,000 or imprisoned not more than ten*  
15      *years, or both.*

16      **"(b) Whoever, as a result of having authorized access to**  
17      *classified information, learns the identity of a covert agent*  
18      *and intentionally discloses any information identifying such*  
19      *covert agent to any individual not authorized to receive clas-*  
20      *sified information, knowing that the information disclosed so*  
21      *identifies such covert agent and that the United States is*  
22      *taking affirmative measures to conceal such covert agent's*  
23      *intelligence relationship to the United States, shall be fined*  
24      *not more than \$25,000 or imprisoned not more than five*  
25      *years, or both.*

1       “(c) *Whoever, in the course of a pattern of activities*  
2 *intended to identify and expose covert agents and with reason*  
3 *to believe that such activities would impair or impede the*  
4 *foreign intelligence activities of the United States, discloses*  
5 *any information that identifies an individual as a covert*  
6 *agent to any individual not authorized to receive classified*  
7 *information, knowing that the information disclosed so iden-*  
8 *tifies such individual and that the United States is taking*  
9 *affirmative measures to conceal such individual's classified*  
10 *intelligence relationship to the United States, shall be fined*  
11 *not more than \$15,000 or imprisoned not more than three*  
12 *years, or both.*

13                       “DEFENSES AND EXCEPTIONS

14       “SEC. 502. (a) *It is a defense to a prosecution under*  
15 *section 501 that before the commission of the offense with*  
16 *which the defendant is charged, the United States had pub-*  
17 *licly acknowledged or revealed the intelligence relationship to*  
18 *the United States of the individual the disclosure of whose*  
19 *intelligence relationship to the United States is the basis for*  
20 *the prosecution.*

21       “(b)(1) *Subject to paragraph (2), no person other than a*  
22 *person committing an offense under section 501 shall be sub-*  
23 *ject to prosecution under such section by virtue of section 2 or*  
24 *4 of title 18, United States Code, or shall be subject to pros-*

1 *ecution for conspiracy to commit an offense under such*  
2 *section.*

3       “(2) Paragraph (1) shall not apply in the case of a  
4 *person who acted in the course of a pattern of activities in-*  
5 *tended to identify and expose covert agents and with reason*  
6 *to believe that such activities would impair or impede the*  
7 *foreign intelligence activities of the United States.*

8       “(c) It shall not be an offense under section 501 to  
9 *transmit information described in such section directly to the*  
10 *Select Committee on Intelligence of the Senate or to the Per-*  
11 *manent Select Committee on Intelligence of the House of*  
12 *Representatives.*

13       “(d) It shall not be an offense under section 501 for an  
14 *individual to disclose information that solely identifies him-*  
15 *self as a covert agent.*

16       “**PROCEDURES FOR ESTABLISHING COVER FOR**  
17       **INTELLIGENCE OFFICERS AND EMPLOYEES**

18       “**SEC. 503. (a)** *The President shall establish procedures*  
19 *to ensure that any individual who is an officer or employee of*  
20 *an intelligence agency, or a member of the Armed Forces*  
21 *assigned to duty with an intelligence agency, whose identity*  
22 *as such an officer, employee, or member is classified informa-*  
23 *tion and which the United States takes affirmative measures*  
24 *to conceal is afforded all appropriate assistance to ensure that*  
25 *the identity of such individual as such an officer, employee,*

1 or member is effectively concealed. Such procedures shall  
2 provide that any department or agency designated by the  
3 President for the purposes of this section shall provide such  
4 assistance as may be determined by the President to be neces-  
5 sary in order to establish and effectively maintain the secrecy  
6 of the identity of such individual as such an officer, em-  
7 ployee, or member.

8 “(b) Procedures established by the President pursuant  
9 to subsection (a) shall be exempt from any requirement for  
10 publication or disclosure.

11 “EXTRATERRITORIAL JURISDICTION

12 “SEC. 504. There is jurisdiction over an offense under  
13 section 501 committed outside the United States if the indi-  
14 vidual committing the offense is a citizen of the United  
15 States or an alien lawfully admitted to the United States for  
16 permanent residence (as defined in section 101(a)(20) of the  
17 Immigration and Nationality Act).

18 “PROVIDING INFORMATION TO CONGRESS

19 “SEC. 505. Nothing in this title shall be construed as  
20 authority to withhold information from Congress or from a  
21 committee of either House of Congress.

22 “DEFINITIONS

23 “SEC. 506. For the purposes of this title:

24 “(1) The term ‘classified information’ means in-  
25 formation or material designated and clearly marked

1       *or clearly represented, pursuant to the provisions of a*  
2       *statute or Executive order (or a regulation or order*  
3       *issued pursuant to a statute or Executive order), as re-*  
4       *quiring a specific degree of protection against un-*  
5       *authorized disclosure for reasons of national security.*

6           “(2) The term ‘authorized’, when used with re-  
7       *spect to access to classified information, means having*  
8       *authority, right, or permission pursuant to the provi-*  
9       *sions of a statute, Executive order, directive of the*  
10       *head of any department or agency engaged in foreign*  
11       *intelligence or counterintelligence activities, order of*  
12       *any United States court, or provisions or any rule of*  
13       *the House of Representatives or resolution of the*  
14       *Senate which assigns responsibility within the respec-*  
15       *tive House of Congress for the oversight of intelligence*  
16       *activities.*

17           “(3) The term ‘disclose’ means to communicate,  
18       *provide, impart, transmit, transfer, convey, publish, or*  
19       *otherwise make available.*

20           “(4) The term ‘covert agent’ means—

21               “(A) *an officer or employee of an intelligence*  
22               *agency or a member of the Armed Forces assigned*  
23               *to duty with an intelligence agency,*

1           “(i) whose identity as such an officer,  
2           employee, or member is classified informa-  
3           tion, and

4           “(ii) who is serving outside the United  
5           States or has within the last five years  
6           served outside the United States; or

7           “(B) a United States citizen whose intelli-  
8           gence relationship to the United States is classi-  
9           fied information, and

10           “(i) who resides and acts outside the  
11           United States as an agent of, or informant  
12           or source of operational assistance to, an in-  
13           telligence agency, or

14           “(ii) who is at the time of the disclosure  
15           acting as an agent of, or informant to, the  
16           foreign counterintelligence or foreign counter-  
17           terrorism components of the Federal Bureau  
18           of Investigation; or

19           “(C) an individual, other than a United  
20           States citizen, whose past or present intelligence  
21           relationship to the United States is classified in-  
22           formation and who is a present or former agent  
23           of, or a present or former informant or source of  
24           operational assistance to, an intelligence agency.



1           “(5) The term ‘intelligence agency’ means the  
2           Central Intelligence Agency, a foreign intelligence  
3           component of the Department of Defense, or the foreign  
4           counterintelligence or foreign counterterrorism compo-  
5           nents of the Federal Bureau of Investigation.

6           “(6) The term ‘informant’ means any individual  
7           who furnishes information to an intelligence agency in  
8           the course of a confidential relationship protecting the  
9           identity of such individual from public disclosure.

10           “(7) The terms ‘officer’ and ‘employee’ have the  
11           meanings given such terms by sections 2104 and 2105,  
12           respectively, of title 5, United States Code.

13           “(8) The term ‘Armed Forces’ means the Army,  
14           Navy, Air Force, Marine Corps, and Coast Guard.

15           “(9) The term ‘United States’, when used in a  
16           geographic sense, means all areas under the territorial  
17           sovereignty of the United States and the Trust Terri-  
18           tory of the Pacific Islands.

19           “(10) The term ‘pattern of activities’ requires a  
20           series of acts with a common purpose of objective.”.

21           (b) The table of contents at the beginning of such Act is  
22           amended by adding at the end thereof the following:

“TITLE V—PROTECTION OF CERTAIN NATIONAL SECURITY  
INFORMATION

“Sec. 501. Protection of identities of certain United States undercover intelligence  
officers, agents, informants, and sources.

“Sec. 502. Defenses and exceptions.

“Sec. 503. Procedures for establishing cover for intelligence officers and employees.

*"Sec. 504. Extraterritorial jurisdiction.*

*"Sec. 505. Providing information to Congress.*

*"Sec. 506. Definitions."*

Amend the title so as to read: "A bill to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources and to direct the President to establish procedures to protect the secrecy of these intelligence relationships."

○